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DOCKET NO. 5085-0001

REMARKS/ARGUMENTS

Favorable reconsideration of the above-identified patent application, in light of the above amendments and the following remarks is respectfully requested. The presently pending claims are claims 1-10. Claims 1-5, 8, and 9 have been amended.

The Examiner stated that new corrected drawings are required in this application because the current drawing do not seem to have been drafted by a draftsman. Upon receipt of a Notice of Allowance, the Applicant will submit formalized drawings.

The Examiner rejected claims 1, 2, 4, 9, and 10 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,105,304 to Wicklund (Wicklund). The Examiner stated that Wicklund discloses a tail with a substantially concentric base having a plurality of strands affixed through the eye to the crank bait which shows the skirt attached adjacent to an eye, and the tail provides movement as the crank bait moves through the water.

In response, the Applicant has amended independent claims 1 and 9 to better differentiate Applicant's invention from Wicklund. Wicklund discloses a lure with a skirt over a hook. The Applicant's invention utilizes a tail which is attachable to a *crank bait* which provides a unique movement through water. Crank bait is configured in such a manner that the bait "wobbles" through the water with a very distinct movement. This distinct movement can only be achieved with a crank bait. In the Applicant's invention, the tail is specifically attached to a crank bait to provide a distinct counteracting movement related to the crank bait "wobbling" movement. The tail is configured and located in such a fashion that the crank bait and attached tail provide a very life-like movement of the entire crank bait. Specifically, the Applicant's invention provides an accessory for a lure which,

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through the movement of the lure and tail, creates a vibration in the water that imitates live prey. Fish feel this vibration through their lateral lines, which are a part of their central nervous system. However, Wicklund does not disclose *a crank bait*. As discussed in the Applicant's specification and is well known to those skilled in the art, the ordinary fishing lure disclosed in Wicklund is distinctly different than a crank bait. The Wicklund fishing lure, specifically a spinner bait, merely travels through the water without any "wobbling" motion. Wicklund only discloses a skirt fitting over a hook, which is well known in the art of fishing. Wicklund does not provide any disclosure that the movement of the tail should be a counteracting motion in relationship to the fishing lure. On the other hand, the Applicant's invention is specifically utilized on crank baits to providing a counteracting motion.

In regards to claims 9 and 10, the Applicant's claimed invention utilizes at least two cycle strands which spiral through the water. The Examiner stated that in regards to claim 10, Wicklund discloses each cycle strand being biased to a curved shape. The Applicant respectfully disagrees. Figure 2 referenced by the Examiner merely discloses a filament segment having a *tapered* section, not a curved section (see Col. 3, lines 21-33). Specifically, Wicklund discloses the use of a tapered segment to provide a "pulsating and undulating movement." However, the Applicant's invention provides a curved shape which enables the cycle strand to *spiral* through the water when the crank bait is moved through the water.

Claims 2 and 4 depend from independent claim 1 and recite additional limitations in combination with the novel elements of claim 1. In addition, claim 10 depends from independent claim 9 and recites additional limitations in combination with the novel elements of claim 9.

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Therefore, the withdrawal of the rejection and the allowance of claims 1, 2, 4, 9, and 10 is respectfully requested.

The Examiner also rejected claims 5-8 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,104,486 to Gressard (Gressard). The Examiner stated that Gressard discloses a crank bait having a rearwardly mounted eye and a bill mounted on a forward portion of the bait, and a tail having a concentric base with a plurality of strands. The Examiner also stated that the tail provided movement as the crank bait moves through the water.

In response, the Applicant has amended independent claim 5 to better differentiate Applicant's invention from Gressard. Gressard discloses a skirt for a hook attached to a fishing lure which is not a crank bait. Specifically, Gressard discloses a fishing lure having a spinner 22 which is completely different from a bill on a crank bait. However, the Applicant's invention, on the other hand, provides a tail which is attached to a crank bait. The tail is so configured to provide a counteracting movement in relation to the forward movement of the crank bait. Gressard does not disclose using a tail for a crank bait. Claims 6-8 depend from independent claim 5 and recite additional limitations in combination with the novel elements of claim 5. Therefore, the withdrawal of the rejection and the allowance of claims 5-8 is respectfully requested.

The Examiner also rejected claim 3 under 35 U.S.C. 103(a) as being unpatentable over Wicklund in view of U.S. Patent No. 2,051,978 to Accetta (Accetta). The Examiner stated that Wicklund substantially discloses the skirt as detailed in claims 1 and 2 but does not disclose the use of a split ring. The Examiner also stated that Accetta discloses the use of a split ring in combination

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with a fishing lure having a skirt. In addition, the Examiner stated that it would have been obvious to one of ordinary skill in the art to use a split ring as an eye in the lure of Wicklund.

In response, the Applicant has amended independent claim 1 to better differentiate Applicant's invention from Wicklund and Accetta. Claim 3 depends from independent claim 1 and recite additional limitations in combination with the novel elements of claim 1. As discussed above, Wicklund does not disclose a crank bait. The skirt disclosed in Wicklund is merely used to hide the hook attached to a fishing lure. Neither Wicklund nor Accetta teaches or suggest a tail which provides a counteracting movement in relationship to the forward movement of the crank bait.

In addition, the Applicant respectfully disagrees that Wicklund and Accetta disclose the split ring being attached to the eye by passing the concentric base through the eye and hook. The Applicant's invention provides a novel way of attaching the tail to the crank bait which is not taught or suggested by the cited references. For prior art references to be combined to render obvious a subsequent invention under Section 103, there must be something in the prior art as a whole which suggests the desirability, and thus the obviousness, of making the combination. *Uniroyal v. Rudkin-Wiley*, 5 U.S.P.Q.2d 1434, 1438 (Fed. Cir. 1988). The teachings of the references can be combined only if there is some suggestion or incentive in the prior art to do so. *In re Fine*, 5 U.S.P.Q.2d at 1599. Hindsight is strictly forbidden. It is impermissible to use the claims as a framework from which to pick and choose among individual references to recreate the claimed invention. *Id.* At 1600; *W.L. Gore*, 220 U.S.P.Q. at 312. Moreover, the mere fact that a prior art structure could be modified to produce the claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 23 U.S.P.Q.2d 1780, 1783

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(Fed. Circ. 1992); *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). Therefore, the withdrawal of the rejection and the allowance of claim 3 is respectfully requested.

CONCLUSION

For all the above reasons, the Applicant respectfully requests the reconsideration and withdrawal of the rejection and the allowance of claims 1-10.

Respectfully submitted,



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